

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS  
EASTERN DIVISION

In re:  MARIO TRAVASCIO, JR.,  Debtor.	Chapter 13 Case No. 19-12291-FJB
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**OBJECTION OF U.S. BANK TRUST TO  
CONFIRMATION OF  
CHAPTER 13 PLAN**

NOW COMES U.S. Bank Trust as Trustee of the Tiki Series III Trust as serviced by SN Servicing Corp. (“**U.S. Bank Trust**”) and objects to confirmation of the Amended Chapter 13 plan of John Toland, III (the “**Debtor**”) filed on November 12, 2019. In support of its objection to confirmation, U.S. Bank Trust states as follows.

**STATEMENT OF MATERIAL FACTS**

1. Mario Travascio, Jr. (the “**Debtor**”) is an individual asserting an ownership interest in the real property known as and numbered 75 Stetson Ave., Swampscott, Essex County, Massachusetts (the “**Property**”). On information and belief, the Property does serve as the Debtor’s principal residence.
2. The objecting party, U.S. Bank Trust, has a principal place of business located at 7114 E. Stetson Drive, Suite 250, Scottsdale, Arizona.
3. On March 23, 2009, the Debtor executed and delivered to Virgin Money USA, INC. (the “**Lender**”) a promissory note in the original amount of \$150,000.00 (the

“**Note**”). The Note was subsequently endorsed in blank and transferred to U.S. Bank Trust.

4. Simultaneously therewith, as security for the obligations under the Note, the Debtor executed and delivered to Mortgage Electronic Registration Systems, Inc., as nominee for the Lender, a mortgage (the “**Mortgage**”) on the Property. The Lender recorded the Mortgage with the Essex County Registry of Deeds (the “**Registry**”). True copies of said Note and Mortgage are attached to herewith as Exhibit A and Exhibit B, respectively.

5. The Mortgage was subsequently transferred to U.S. Bank Trust by Assignment of Mortgage. Copies of the assignments of mortgage are attached to the as Exhibit C.

6. On July 1, 2019 at 3:00pm, as a result of the then borrower’s default under the Note and Mortgage, a foreclosure sale of the Property was conducted. The Property was sold back to U.S. Bank Trust. The sale was over, and the memorandum of sale was signed, by 3:36pm. A copy of the memorandum of sale is attached hereto as Exhibit D. A copy of the foreclosure deed and affidavit of sale are attached hereto as Exhibit E and Exhibit F.

7. On July 1, 2013 at 3:40pm, after the auction was completed, this Chapter 13 case was filed. As such, the Property is not part of the Debtor’s estate.

#### **GROUND FOR OBJECTION TO PLAN**

8. U.S. Bank Trust respectfully asks this Court to refuse to confirm the Plan for the following reasons.

**Debtor is Attempting to Treat a Claim that has been Foreclosed Upon**

9. U.S. Bank Trust objects to the proposed treatment and asserts that the Plan is unconfirmable over its objection.

10. The Debtor's amended plan proposes adequate protection payments in the amount equal to the monthly mortgage payment and calls for the sale of the Property.

11. U.S. Bank Trust objects to this proposed treatment, as the Property is no longer owned by the Debtor and it is not included in the bankruptcy estate since the foreclosure sale occurred prior to the filing of the instant case. As such, Debtor may not sell the Property via the amended Chapter 13 plan.

WHEREFORE, in light of the foregoing, U.S. Bank Trust respectfully requests that this Court enter an order:

- (a) Denying confirmation of the Debtor's amended Chapter 13 plan; and
- (b) Granting U.S. Bank Trust such other and further relief as is just and proper.

*Signature Page to Follow*

Respectfully submitted,

U.S. BANK TRUST, N.A., AS TRUSTEE OF  
THE TIKI SERIES III TRUST AS SERVICED  
BY SN SERVICING CORP.,

By its attorney,

/s/ Michael E. Swain, Esq.

Michael E. Swain, Esq. (BBO#676513)

Sassoon & Cymrot, LLP

84 State Street

Boston, MA 02109

(617) 720-0099

[MSwain@SassoonCymrot.com](mailto:MSwain@SassoonCymrot.com)

DATE: November 26, 2019

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**CERTIFICATE OF SERVICE**

I, Michael E. Swain, Esq. of the law firm of Sassoon & Cymrot, LLP, hereby certify that I have this 26th day of November 2019 served on behalf of U.S. Bank Trust, N.A., as Trustee of the Tiki Series III Trust as serviced by SN Servicing Corp., an Objection of U.S. Bank Trust to Confirmation of Amended Chapter 13 Plan and this Certificate of Service by causing copies hereof to be sent by electronic mail via the Case Management / Electronic Case Files (ECF) system and by private electronic mail to all parties not appearing electronically but entitled to service per the Federal Rules of Bankruptcy Procedure.

Mario Travascio, Jr. 75 Stetson Ave Swampscott, MA 01907 (M)	Cynthia Ravosa Massachusetts Bankruptcy Center One South Avenue Natick, MA 01760 (ECF)
Carolyn Bankowski Chapter 13 Trustee Boston P. O. Box 8250 Boston, MA 02114 (ECF)	John Fitzgerald Office of the US Trustee J.W. McCormack Post Office & Courthouse 5 Post Office Sq., 10th Fl, Suite 1000 Boston, MA 02109 (ECF)

/s/ Michael E. Swain, Esq.  
Michael E. Swain, Esq.